

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

YAHSHALOM B.J. GRAY.

Plaintiff,

V.

ROBBERT LUNA, et al.,

Defendants.

Case No. 2:23-cv-02050-JLS-SHK

ORDER DISMISSING CASE WITHOUT PREJUDICE

I. BACKGROUND

On March 17, 2023, Plaintiff Yahshalom B.J. Gray (“Plaintiff”), proceeding pro se, constructively filed¹ a Complaint (“Complaint” or “Compl.”) under 42 U.S.C. § 1983 (“§ 1983”), alleging violations of his civil rights. Electronic Case Filing Number (“ECF No.”) 1, Compl.

On January 22, 2024, after screening the Complaint under 28 U.S.C. § 1915, the Court issued an Order Dismissing Complaint With Leave To Amend (“ODLA”). ECF No. 20, ODLA. The Court provided Plaintiff until February 12, 2024 (twenty-one days from the date of service of the ODLA), to file a First

¹ Under the “mailbox rule,” when a pro se prisoner gives prison authorities a pleading to mail to court, the court deems the pleading constructively “filed” on the date it is signed. Douglas v. Noelle, 567 F.3d 1103, 1107 (9th Cir. 2009) (applying the mailbox rule to civil rights suits filed by pro se prisoners).

1 Amended Complaint (“FAC”). Id. at 12. In the ODLA, the Court warned that “**if**
 2 **Plaintiff does not timely file a FAC, the Court may recommend that this**
 3 **action be dismissed with or without prejudice for failure to state a claim,**
 4 **failure to prosecute, and/or failure to obey Court orders under Federal Rule**
 5 **of Civil Procedure [(“Fed. R. Civ. P.” or “Rule”)] 41(b).**” Id. at 13 (emphasis in
 6 original). Plaintiff did not file a FAC by the deadline.

7 On February 23, 2024, the Court entered an Order to Show Cause (“OSC”)
 8 as to why this case should not be dismissed for failure to prosecute and/or follow
 9 Court orders regarding Plaintiff’s failure to file a FAC. ECF No. 21, OSC. The
 10 Court ordered Plaintiff to respond to the OSC or file a FAC by March 7, 2024. Id.
 11 at 1. Plaintiff was cautioned “**failure to timely file a response to this Order or a**
 12 **FAC will result in the Court recommending that this action be dismissed**
 13 **without prejudice.**” Id. at 1-2 (emphasis in original). As of the date of this Order,
 14 Plaintiff has failed show cause why this case should not be dismissed or to
 15 otherwise participate in this litigation. Plaintiff has not filed a FAC and has not
 16 contacted the Court.

17 II. DISCUSSION

18 District courts have sua sponte authority to dismiss actions for failure to
 19 prosecute or to comply with court orders. See Fed. R. Civ. P. 41(b); Link v.
 20 Wabash R.R. Co., 370 U.S. 626, 629-30 (1962); Hells Canyon Pres. Council v.
 21 U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005) (stating courts may dismiss an
 22 action under Federal Rule of Civil Procedure 41(b) sua sponte for a plaintiff’s
 23 failure to prosecute or comply with the Federal Rules of Civil Procedure or the
 24 court’s orders); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992) (ordering
 25 dismissal for failure to comply with court orders).

26 In deciding whether to dismiss for failure to prosecute or comply with court
 27 orders, a district court must consider five factors: “(1) the public’s interest in
 28 expeditious resolution of litigation; (2) the court’s need to manage its docket; (3)

1 the risk of prejudice to the defendants; (4) the public policy favoring disposition of
 2 cases on their merits; and (5) the availability of less drastic sanctions.” Henderson
 3 v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986); see also Pagtalunan v. Galaza,
 4 291 F.3d 639, 642 (9th Cir. 2002) (setting out similar five factors as in Henderson).
 5 “Dismissal is appropriate ‘where at least four factors support dismissal, or where at
 6 least three factors ‘strongly’ support dismissal.’” Neal v. Reslan, No. CV 19-
 7 09291 PA (ASx), 2020 WL 754366, at *1 (C.D. Cal. Jan. 16, 2020) (quoting
 8 Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998)). In a case
 9 involving sua sponte dismissal, however, the fifth Henderson factor regarding the
 10 availability of less drastic sanctions warrants special focus. Hernandez, 138 F.3d
 11 at 399.

12 Here, the first two factors—public interest in expeditious resolution of
 13 litigation and the Court’s need to manage its docket—weigh in favor of dismissal.
 14 Despite extensions and warnings, Plaintiff has failed to respond to multiple Court
 15 orders and has failed to file his FAC. This failure to prosecute and follow Court
 16 orders hinders the Court’s ability to move this case toward disposition and suggests
 17 Plaintiff does not intend to litigate this action diligently.

18 The third factor—prejudice to Defendants—also weighs in favor of
 19 dismissal. A rebuttable presumption of prejudice to a defendant arises when
 20 plaintiffs unreasonably delay prosecution of an action. See In re Eisen, 31 F.3d
 21 1447, 1452-53 (9th Cir. 1994) (citations omitted). Here, Plaintiff has not offered
 22 any excuse for his failure to comply with the Court’s order and respond in a timely
 23 manner and this “prejudice” element thus favors dismissal.

24 The fourth factor—public policy in favor of deciding cases on the merits—
 25 ordinarily weighs against dismissal. However, it is Plaintiff’s responsibility to
 26 move litigation towards disposition at a reasonable pace and to avoid dilatory and
 27 evasive tactics. See Morris v. Morgan Stanley, 942 F.2d 648, 652 (9th Cir. 1991).
 28 Plaintiff has not met this responsibility despite having been: (1) instructed on his

1 responsibilities; (2) granted sufficient time in which to discharge them; and (3)
2 repeatedly warned of the consequences of failure to do so. See ECF Nos. 10, 13,
3 15, 17-18. Under these circumstances, though this policy favors Plaintiff, it does
4 not outweigh Plaintiff's failure to obey Court orders or to file responsive
5 documents within the time granted.

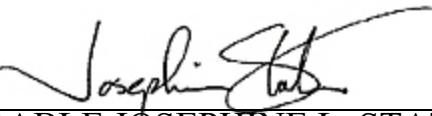
6 The fifth factor—availability of less drastic sanctions—also weighs in favor
7 of dismissal. The Court cannot move the case toward disposition without
8 Plaintiff's compliance with Court orders or participation in this litigation. Despite
9 repeated attempts by the Court to obtain a response, Plaintiff has shown he is either
10 unwilling or unable to comply with Court orders by failing to file responsive
11 documents or unable to otherwise cooperate in prosecuting this action. The Court
12 is not aware of any lesser sanction that is available in this case. See Henderson,
13 779 F.2d at 1424 (“The district court need not exhaust every sanction short of
14 dismissal before finally dismissing a case but must explore possible and
15 meaningful alternatives.”).

16 Accordingly, because it appears that Plaintiff has abandoned this litigation,
17 and because Plaintiff has repeatedly defied Court orders, the Court **DISMISSES**
18 this case, without prejudice.

19 **III. ORDER**

20 Based on the foregoing, IT IS ORDERED THAT Judgment be entered
21 **DISMISSING** this case without prejudice.

22
23 DATED: March 28, 2024


24 HONORABLE JOSEPHINE L. STATON
United States District Judge

25 Presented by:


26

27 HON. SHASHI H. KEVALRAMANI
28 United States Magistrate Judge